

DECISION FAR REACHING IN EFFECT

Minors Must be Excluded From Saloons in New Mexico.

Santa Fe, N. M., Sept. 4.—(Special.)—A decision was handed down by the supreme court of New Mexico at its recent session at Santa Fe which is of such importance to the interests of the homes and educational interests of this territory that one of the judges of the supreme court believes that it should be published in all the territorial papers, both as a safeguard to the boys and as a warning to those engaged in the sale of spirituous liquors and the running of gaming houses.

The case was the Territory of New Mexico versus J. P. Church, an appellant from a decision of the district court of Chaves county.

On the 15th day of November, 1903, the defendant was indicted and the body of the indictment is as follows:

"That Joshua P. Church, of the county of Chaves, in the territory of New Mexico, on the 25th day of October, 1903, at the county of Chaves aforesaid, being then and there proprietor, keeper and manager of a certain saloon there situate where intoxicating liquor is kept and offered for sale and where gambling is carried on and permitted, did unlawfully and knowingly permit and allow one Guy C. Clements, a minor under age of twenty-one years and a pupil of a school and educational institution, to be and to loiter upon and frequent the premises belonging to said saloon and engage in games and amusements thereon contrary to the form of the statute in such cases made and provided and against the peace and dignity of the territory of New Mexico."

Record of Case. The record of the case discloses very few facts, but those disclosed, together with the admissions of the defendant, seem sufficient for a proper understanding and disposition of the case.

The substance of the probf was, that Guy C. Clements, Clarence Clements, Reid Curtis and one McCracken were in the Oriental saloon at Roswell, some time during September, October or November, 1903, and while there Guy C. Clements engaged in playing the roulette wheel while the others watched the play; that Guy C. Clements and his brother, Clarence, were in that saloon more than once; that all of these boys were minors and students of the New Mexico Military Institute, and that they were not molested or put out of the saloon at any time; that a man by the name of O'Connor was operating the roulette wheel in the

saloon and as far as the testimony shows, the defendant was not in the saloon at the time the boys were there. The defendant, however, admits upon the record, that he was the owner and manager of the Oriental saloon in the fall of 1903.

Upon a trial before a jury, the defendant was found guilty as charged in the indictment. Motion for a new trial having been overruled, judgment was rendered on the verdict, and the defendant was sentenced to pay to the territory a fine of fifty dollars and costs and to stand committed until fine and costs were paid.

Case Annotated. The case was taken to the supreme court by appeal. The opinion handed down by the supreme court is as follows: A number of assignments of error in the record were presented by the defendant in his appeal, but the court ruled that they were merely clerical and did not affect the integrity of this case.

The indictment is based upon the violation of section 3, chapter 3, laws of 1901, which is as follows: "Sec. 3. It shall be unlawful for the proprietor, keeper or manager of any saloon where intoxicating liquor is kept or offered for sale, or where gambling in any form is carried on or permitted, to permit any minor under age of twenty-one years or any pupil in any school or educational institution, to loiter upon or frequent the premises belonging to such saloon, or to engage in games or amusement of any kind thereon."

Section 7 of the same chapter is also pertinent, and provides that: The word person as used in this act, shall be deemed to mean firm or corporation, as well as natural person, and the person managing the business of such firm or corporation shall be liable to the penalties prescribed by this act. And the proprietor or owner of any of the establishments, mentioned in this act shall be liable to the penalties prescribed by this act for any violation of its provisions in or at their establishments whether committed by themselves or by persons in their employ.

Defendant's Objections. In the 2nd, 3rd, 4th and 5th assignments, it is charged that the court committed error in excluding testimony offered in behalf of the defendant to the effect that the defendant had forbidden minors to loiter in his saloon premises; that he had instructed his employees not to allow minors to loiter about his saloon, and had so instructed O'Connor, who was in charge of the roulette wheel at the time Guy C. Clements was in the saloon. The contention of the defendant is, that his good faith evidenced by such instructions to minors and employees constitute a good defense.

The court below excluded this testimony as immaterial on the ground that the same would not constitute a defense. In Carroll vs. The State, 63 Mo., 551, the court said: "The fact that he (the saloon keeper) has given orders not to sell to minors, only shows a bona fide intent to obey the law, which all the authorities say is immaterial in determining guilt."

Had no Knowledge of Fact. The 2nd, 3rd, 4th, 5th and 6th assignments of error are made the basis of contention by defendant's counsel, as stated in his brief, that "The principal is not liable under the statute for the act of his employee unless he had knowledge of such act; nor is he liable if the act is committed by the employee against the order of the principal and without his knowledge."

This would doubtless be a correct

statement of the law under a statute which made the intention to commit an essential ingredient of the crime. Our statute provides that "The proprietor or owner of any of the establishments mentioned in this act shall be liable to the penalties by this act for any violation of its provisions within or at their establishments, whether committed by themselves or by persons in their employ." It is clear from this provision of the statute that intent to commit, is not made an essential element of the crime, nor is it provided that it shall be knowingly done.

Obligated to Obey Law.

When this defendant procured a license to conduct that saloon, he obligated to conduct it in obedience to law, and one of the existing requirements of law was that minors and students should not be permitted to loiter upon or frequent the defendant's saloon premises. The defendant was under obligation to see that this law was obeyed and if he chose to leave others in charge of his saloon he is liable for their failure to do what the law requires.

Not Universal Rule. As a rule, there can be no crime without a criminal intent, but this is by no means a universal rule. One may be guilty of the high crime of manslaughter, when his guilt is or fault is in gross negligence.

Many statutes which are in the nature of police regulations, as is this, impose criminal penalties irrespective of any intent to violate them, the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible.

Details Omitted. The foregoing outline of the decision of the supreme court omits much of detail and does not quote the many decisions of other courts upholding the decision of the lower court which is appealed from, the decision of the lower court finding the saloon keeper guilty and assessing punishment was affirmed with costs. The entire bench of the supreme court concurring.

The decision will be looked upon by parents and guardians, and also by those who have in charge the educational interests of the territory as a protection measure and one that is calculated to make keepers of saloons and gambling houses extremely careful in their observance of the statutory law, which when obeyed is an absolute defense against the debauchment of the youth of the territory.

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